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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/660,078	09/11/2000	John K. Smith	498-239	6232

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EXAMINER

ODLAND, KATHRYN P

ART UNIT PAPER NUMBER

3743

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/660,078

Applicant(s)

SMITH, JOHN K.

Examiner

Kathryn Odland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment/RCE*

This is a response to the Amendment/RCE dated August 30, 2004. Claims 1 and 3-11 are under consideration.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Winston et al. in US Patent No. 5,723,003.

Regarding claim 1, Winston et al. disclose an endovascular prosthesis (generally at 10 and associated components) having an endovascular member having a tubular structure (10), as seen in figure 10 having one of a hook structure and a loop structure and a patch (36) for placement against the endovascular member, the patch having the other of the hook structure and the loop structure, wherein the hook structure and the loop structure are matingly engageable so as to maintain the patch in substantially fluid tight engagement with the endovascular member, as recited in column 7, lines 25-45 and seen in figures 1-10. Also, Winston et al. disclose an endovascular member that is selected from the group of grafts, stents and stent-grafts, as discussed throughout.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 3, 4, 5, and 7-11 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Winston et al. in US Patent No. 5,723,003.

Regarding claim 3, Winston et al. disclose that as applied to claim 1. Further, hook and loop structures that are of textile materials would be obvious if not inherent. Textile is an extraordinarily common material to make hook and loop material.

Regarding claim 4, Winston et al. disclose that as applied to claim 1. Further, hook and loop structures that are selected from the group of polypropylene terephthalate, polyurethane, a copolyester elastomer and nylon, as recited in column 8, encompassed by Velcro® would be obvious if not inherent to one with ordinary skill in the art as common hook and loop material.

Regarding claim 5, Winston et al. disclose a method of connecting via attaching a patch (such as 36) to an endovascular member (10), wherein the patch has a hook or loop structure cooperative with a hook or loop structure of the endovascular member for maintaining the patch in substantially fluid tight communication with the endovascular member, as recited in column 7, lines 20-30, column 14, column 15 and seen in figures 1-21. Given the broad nature of the claim, the preamble since not amplified in the body of the claim is not given patentable weight. Thus, that disclosed by Winston et al. meets the limitations. Moreover, it would be obvious to one to use hook and loop material to repair.

Regarding claim 7, Winston et al. disclose that as applied to claim 5, as well as, a patch has is one of a hook structure and a loop structure and an endovascular member that has the other of the hook structure and the loop structure, as recited in column 7, lines 25-45.

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Regarding claim 8, Winston et al. disclose that as applied to claim 5, as well as, attaching that is done in situ, as recited in column 7, lines 30-35.

Regarding claim 9, Winston et al. disclose that as applied to claim 5, as well as, attaching that is effective by expanding a balloon (22) affixed to a catheter (inherent) to cause the hook or loop structure to engage the other of the hook or loop structure of the endovascular member, as recited in column 7, lines 30-35.

Regarding claims 10 and 11, Winston et al. disclose that as applied to claim 6, as well as, a delivery step that is effected by use of a balloon (22) catheter (inherent), as recited in column 7, lines 30-35.

6. Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Winston et al. in US Patent No. 5,723,003.

Regarding claim 6, Winston et al. disclose that as applied to claim 5. However, Winston et al. do not explicitly recite delivering the patch (36) to the endovascular member through a body lumen containing the endovascular member. On the other hand, it would be obvious to one with ordinary skill in the art. The assembly can be done by any well-known means.

#### ***Conclusion***

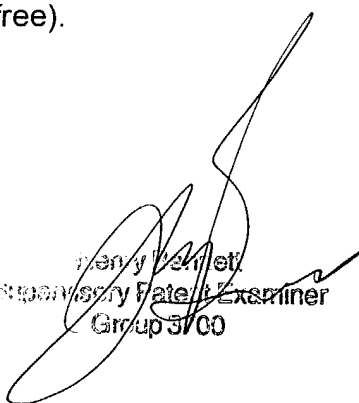
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathryn Odland whose telephone number is (703) 306-3454. The examiner can normally be reached on M-F (7:30-5:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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.Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KO



Henry Chen, et al.  
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